

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY
DEPUTY

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

IN RE THE PERSONAL RESTRAINT
PETITION OF:

SEAN DOMINIGUE FRANCIS,

Petitioner.

82619-6
NO. 37489-7

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Do convictions for attempted first degree robbery and assault in the second degree – deadly weapon, violate double jeopardy where the two convictions are identical neither in fact or law?

2. Do convictions for attempted first degree robbery and murder in the first degree – felony murder (with the predicate crime of attempted robbery) violate double jeopardy where the two convictions are based on an attempted robbery of two different persons?

3. Did the defendant waive his ability to challenge his conviction on double jeopardy grounds where he entered into a plea agreement to the charges and the charges are facially valid?

4. Assuming *arguendo* defendant's double jeopardy challenge has merit, what is the proper remedy where defendant does not allege an invalid plea of guilty?

B. STATUS OF PETITIONER:

Petitioner, SEAN FRANCIS, is restrained pursuant to a Judgment and Sentence entered in Pierce County Cause No. 95-1-05023-1. (Appendix A).

The defendant was charged by amended information with first degree murder, assault in the first degree, and attempted robbery in the first degree (two counts). (Appendix B).

On April 10, 1996, the State filed amended charges of murder in the first degree, attempted robbery in the first degree and second degree assault. (Appendix C). In exchange for the reduction in charges the defendant agreed to enter a guilty plea as charged. (Appendix D).

A judgment was entered on May 30, 1996. (Appendix A). The court found that assault in the second degree and attempted robbery in the first degree constituted the same criminal conduct and counted the crimes as one crime in calculation of the offender score pursuant to RCW 9.94A.400(1). (Appendix A – Judgment and Sentence at 2). Defendant received a sentence of 347 months on Count I, 14 months on Count II, and 40 ½ months on County III. (Appendix A).

Defendant now files his first personal restraint petition, over ten years post-conviction, claiming that the charges he pled guilty to violate double jeopardy.

The State has no information as to indigency.

1 C. GENERAL PERSONAL RESTRAINT PETITION LAW.

2 Personal restraint procedure has its origins in the State's habeas corpus remedy,
3 guaranteed by article 4, section 4, of the State Constitution. Fundamental to the nature of
4 habeas corpus relief is the principle that the writ will not serve as a substitute for appeal. A
5 personal restraint petition, like a petition for a writ of habeas corpus, is not a substitute for an
6 appeal. *In re Hagler*, 97 Wn.2d 818, 823-24, 650 P.2d 1103 (1982). Collateral relief
7 undermines the principles of finality of litigation, degrades the prominence of the trial, and
8 sometimes costs society the right to punish admitted offenders. These are significant costs,
9 and they require that collateral relief be limited in state as well as federal courts. *Hagler, Id.*

10 In this collateral action, the petitioner has the duty of showing constitutional error and
11 that such error was actually prejudicial. The rule that constitutional errors must be shown to
12 be harmless beyond a reasonable doubt has no application in the context of personal restraint
13 petitions. *In re Mercer*, 108 Wn.2d 714, 718-21, 741 P.2d 559 (1987); *Hagler*, 97 Wn.2d at
14 825. Mere assertions are insufficient in a collateral action to demonstrate actual prejudice.
15 Inferences, if any, must be drawn in favor of the validity of the judgment and sentence and not
16 against it. *In re Hagler*, 97 Wn.2d at 825-26. To obtain collateral relief from an alleged
17 nonconstitutional error, a petitioner must show "a fundamental defect which inherently results
18 in a complete miscarriage of justice." *In re Cook*, 114 Wn.2d 802, 812, 792 P.2d 506 (1990).
19 This is a higher standard than the constitutional standard of actual prejudice. *Id.* at 810.
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1 Reviewing courts have three options in evaluating personal restraint petitions:

- 2 1. If a petitioner fails to meet the threshold burden of showing actual
3 prejudice arising from constitutional error or a fundamental defect
4 resulting in a miscarriage of justice, the petition must be
 dismissed;
- 5 2. If a petitioner makes at least a prima facie showing of actual
6 prejudice, but the merits of the contentions cannot be determined
7 solely on the record, the court should remand the petition for a full
 hearing on the merits or for a reference hearing pursuant to RAP
 16.11(a) and RAP 16.12;
- 8 3. If the court is convinced a petitioner has proven actual prejudicial
9 error, the court should grant the personal restraint petition without
 remanding the cause for further hearing.

10 *In re Hews*, 99 Wn.2d 80, 88, 660 P.2d 263 (1983).

11 Because of the costs and risks involved, there is a time limit in which to file a
12 collateral attack. The statute that sets out the time limit provides:

13 No petition or motion for collateral attack on a judgment and sentence in a
14 criminal case may be filed more than one year after the judgment becomes
15 final if the judgment and sentence is valid on its face and was rendered by
 a court of competent jurisdiction.

16 RCW 10.73.090(1).

1 In addition to the exceptions listed within that statute, there are other specific
2 exceptions to the one-year time limit for collateral attack.¹

3 Defendant's case became final on the date it was entered: May 30, 1996. *See*
4 RCW 10.73.090(3)(a). Unless defendant can prove that one of the exceptions to the one
5 year time bar exists, his petition is untimely and must be dismissed.

17 ¹ § 10.73.100. Collateral attack -- When one year limit not applicable

18 The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based
19 solely on one or more of the following grounds:

20 (1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering
the evidence and filing the petition or motion;

21 (2) The statute that the defendant was convicted of violating was unconstitutional on its face or
as applied to the defendant's conduct;

22 (3) The conviction was barred by double jeopardy under Amendment V of the United States
Constitution or Article I, section 9 of the state Constitution;

23 (4) The defendant pled not guilty and the evidence introduced at trial was insufficient to
support the conviction;

24 (5) The sentence imposed was in excess of the court's jurisdiction; or

25 (6) There has been a significant change in the law, whether substantive or procedural, which is
material to the conviction, sentence, or other order entered in a criminal or civil proceeding
instituted by the state or local government, and either the legislature has expressly provided that
the change in the law is to be applied retroactively, or a court, in interpreting a change in the law
that lacks express legislative intent regarding retroactive application, determines that sufficient
reasons exist to require retroactive application of the changed legal standard.

1 D. LAW AND ARGUMENT ON THE MERITS

- 2 1. DEFENDANT'S CONVICTIONS FOR ATTEMPTED
3 ROBBERY AND ASSAULT IN THE SECOND DEGREE DO
4 NOT VIOLATE DOUBLE JEOPARDY PRINCIPLES WHERE
5 THE SUBSTANTIAL STEP TO COMMIT THE CRIME OF
6 ATTEMPTED ROBBERY IS NOT FACTUALLY THE SAME
7 AS THE ASSAULT. THE TWO CONVICTIONS ALSO HAVE
8 DIFFERENT LEGAL ELEMENTS WHERE THE ASSAULT
9 SECOND DEGREE IS A DEADLY WEAPON CHARGE AND
10 NOT A BODILY HARM CASE.

11 The double jeopardy clause bars multiple punishments for the same offense. *In re*
12 *Borrereo*, 161 Wn.2d 532, 536, 167 P.3d 1106 (2007) (citing U.S. Const. amend. V;
13 Wash. Const. art. I, sec. 9; *State v. Calle*, 125 Wn.2d 769, 776, 888 P.2d 155 (1995).
14 When a defendant's act supports charges under two statutes, the court must determine
15 whether the legislature intended to authorize multiple punishments for the crimes in
16 question. *Id.* "If the legislature intended that cumulative punishments can be imposed for
17 the crimes, double jeopardy is not offended." *Id.* (citing *State v. Freeman*, 153 Wn.2d
18 765, 771, 108 P.3d 753 (2005)).

19 Where the legislature's intent is not expressly stated in the statutes in question,
20 courts turn to the "same evidence" or *Blockburger* test. *Borrereo* at 536 (citing
21 *Blockburger v. United States*, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932)).
22 Under the same evidence test, double jeopardy is violated if a defendant is convicted of
23 offenses that are identical in fact and in law. *Borrereo*, at 537 (citing *State v. Louis*, 155
24 Wn.2d 563, 569, 120 P.3d 936 (2005)); *Calle*, 125 Wn.2d at 777. "If each offense
25 contains an element not contained in the other, the offenses are not the same; if each
offense requires proof of a fact that the other does not, the court presumes the offenses are
not the same." *Id.* (citing *In re Orange*, 152 Wn.2d 795, 816-18, 100 P.3d 291 (2004));
Calle, 125 Wn.2d at 777-78.

1 However, when one of the two crimes is an attempt crime,² further examination of
2 the elements is warranted. This is so because the criminal attempt statute contains the
3 element that the person “does any act which is a substantial step toward the commission
4 of that crime.” *Borrereo* at 537 (citing RCW 9A.28.020(1)). Thus when looking to
5 whether each offense requires proof of a fact that the other does not, a court must consider
6 whether the facts supporting the “substantial step” are the same facts required to prove the
7 other crime. In *Orange* the court warned against doing “nothing more than compar[ing]
8 the statutory elements at their most abstract level,” and instead clarifying that the phrase
9 “substantial step” acquires meaning only from the facts of each case. 152 Wn.2d at 303.
10

11 In every case applying the “substantial step” analysis, the defendant chose to take
12 the matter to trial, rather than pleading guilty to the charges. See *In re Orange*, 152
13 Wn.2d at 799-800; *State v. Borrereo*, 161 Wn.2d at 535; *State v. Esparza*, 135 Wn. App.
14 54, 143 P.3d 612 (2006). These cases appropriately analyze whether there are facts,
15 independent from the other charged crime, which support a finding of “substantial step.”
16 But where the defendant pleads guilty to the attempted crime, the court may go back to
17 comparing the elements at their most abstract level. This is because a guilty plea relieves
18 the State of its burden of proof, and thus the presumption is that the statutory elements are
19 met, and met in a way that avoids violation of double jeopardy principles. See *In re*
20 *Hews*, 99 Wn.2d 80, 92, 660 P.2d 263 (1983) (Finding sufficient facts to uphold a guilty
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24 ² In his double jeopardy analysis the defendant entirely omits from his argument that this is an inchoate
25 crime. Instead, defendant focuses on the case of *State v. Freeman*, 153 Wn.2d 765, 108 P.3d 753 (2005), a
case that looks at the completed crime of first degree robbery and second degree assault, and thus has
nothing to do with the issue before the court.

1 plea where defendant's guilty plea statement did not expressly contain all of the elements
2 of the crime of escape).

3 In the most generic sense, attempted robbery simply requires a showing that the
4 defendant took a substantial step (e.g. by lying in wait) towards commission of the
5 robbery. RCW 9A.28.020 (Criminal Attempt). It does not require an actual showing of
6 any bodily harm or acquisition of property. Assault, on the other hand, requires a
7 showing that defendant intentionally assaulted another with a deadly weapon. RCW
8 9A.36.020. The State did not allege the bodily injury alternative of second degree assault,
9 instead the State alleged the deadly weapon alternative: "did unlawfully and feloniously
10 assault D'Ann Jacobsen with a deadly weapon, to-wit: a baseball bat." (Appendix C at
11 2). Conversely, the State did not allege the deadly weapon as the basis of elevating
12 robbery to first degree robbery. Instead, the State alleged that defendant acted with intent
13 to "inflict bodily injury upon D'Ann Jacobsen," contrary to RCW 9A.56.200(1)(c).
14 (Appendix C at 2-3). Because there was no requirement for the State to show that an
15 assault occurred in order to prove attempted first degree robbery, the elements of the
16 crimes are different and the legal prong of the *Blockburger* test is not met.

17 Even if this court were to examine the facts as connected to the charge, there were
18 facts independent from the assault, which established the substantial step and defendant's
19 double jeopardy argument fails factually as well.

20 Here, petitioner was charged with attempted robbery in the first degree and assault
21 in the second degree as follows:

22 **Attempted robbery in the first degree:**

23 did unlawfully and feloniously intend to commit the crime of Robbery in
24 the First degree and performed an act which was a substantial step toward
25 the taking of personal property with intent to steal from the person or in
the presence of D'Ann Jacobsen, against such person's will by use or
threatened use of immediate force, violence, or fear of injury to D'Ann

Jacobsen, and in the commission thereof, or in immediate flight therefrom Shawn Dominique Francis inflicted bodily injury upon D'Ana Jacobsen, contrary to RCW 9A.56.190, 9A.56.200 (1)(c) and 9A.28.020.

Assault in the second degree:

Did unlawfully and feloniously assault D'Ann Jacobsen with a deadly weapon, to-wit: a baseball bat, contrary to RCW 9A.36.021(1)(c).

(Appendix C - Second Amended Information).

With respect to the robbery charge, the charging document is inartfully drafted and contains more than the state needed to allege. This surplus language may be disregarded. *State v. Tvedt*, 153 Wn.2d 705, 737, 107 P.3d 827 (2005), citations omitted (“where unnecessary language is included in an information, the surplus language is not an element of the crime that must be proved unless it is repeated in the jury instructions.”). All that the State was required to allege for the attempted robbery charge is that the defendant acted “with intent to commit the crime of Robbery in the First Degree, and took a substantial step toward the commission of that crime.” RCW 9A.28.020.³ Even with the inartful drafting, the State did not specifically allege what the substantial step is that defendant took to commit the crime. When a State does not elect which act amounted to the substantial step, the court may canvas the record to see if any act other than the act which supports the other charge at issue (here assault) supported the substantial step. *In re Borrero supra* at 539.

Here, there were facts that defendant pled guilty to and acknowledged, which constituted a substantial step toward the robbery and these facts were independent of the facts needed to prove assault with a deadly weapon. Included in the “substantial step” for robbery was the act of driving the car to the victim’s home to rob them, “Quinn Spaulding

³ Under RCW 9A.28.020, is guilty of attempt to commit a crime if “he or she does any act which is a substantial step toward the commission of that crime.”

1 convinced me to drive him out to Jason's so that he could rob him of the money Jason and
2 D'ann had recently gotten from her parents." (Statement of Defendant on plea of Guilty,
3 para. 13). Also, as outlined in the supplemental declaration of probable cause, the
4 defendant took many substantial steps, including, driving to the home with the intent to
5 rob the victim; lying in wait with a baseball bat once they got there, and leaving the
6 bushes and walking to strike the victims. (Appendix C – 2nd Amended Information,
7 Supplemental Declaration for Determination of Probable Cause).

8 Similar facts were found sufficient to withstand double jeopardy scrutiny in *State*
9 *v. Esparza*, 135 Wn. App. 54, 143 P.3d 612 (2006), *review denied*, 161 Wn.2d 1004
10 (2006). In *Esparza*, the defendant was convicted of both second degree assault and
11 attempted first degree robbery. 135 Wn. App. at 58. The court considered whether the
12 assault in the case was the "substantial step" taken in furtherance of the robbery. The
13 court looked to the fact that the defendants could have been found guilty of attempted first
14 degree robbery merely by virtue of the fact they entered the store wielding guns and that
15 Beaver's "entry into the store wielding a gun and announcing the robbery . . . strongly
16 corroborated his criminal purpose to commit first degree robbery." 135 Wn. App. at 64.

17 As to the assault, the State only had to prove that the defendant swung the bat at
18 the victim, and not that any bodily harm was inflicted, where the allegation was assault
19 with a deadly weapon. Assault includes three definitions, including "an act, with
20 unlawful force, done with intent to inflict bodily injury upon another, tending, but failing
21 to accomplish it and accompanied with the apparent present ability to inflict the bodily
22 injury if not prevented. It is not necessary that bodily injury be inflicted." *State v. Smith*,
23 159 Wn.2d 778, 154 P.3d 873 (2007). Defendant admitted to swinging a bat at the
24
25

1 victim. (Appendix D – Guilty Plea). This was sufficient to establish assault in the second
2 degree.

3 The convictions also do not merge. The merger doctrine is a judicial doctrine
4 designed to prevent cumulative punishments where lesser included offenses do not
5 include conduct that lies outside of the greater offense’s definition. *State v. Collicott*, 112
6 Wn.2d 399, 410-11, 771 P.2d 1137 (1989). The Washington Supreme Court defined the
7 concept of merger:

8 The merger doctrine is a rule of statutory construction which only applies
9 where the Legislature has clearly indicated that in order to prove a
10 particular degree of crime (e.g., first degree rape) the State must prove not
11 only that a defendant committed that crime but that the crime was
12 accompanied by an act which is defined as a crime elsewhere in the
13 criminal statutes (e.g., assault or kidnapping).

14 *State v. Vladovic*, 99 Wn.2d 413, 420-21, 662 P.2d 853 (1983). This doctrine is to be
15 narrowly construed. *Collicott, supra*, at 410.

16 The *Freeman, supra* case, cited by defendant, rests on merger analysis. The
17 companion case to *Freeman, Zumwalt*, examined first degree robbery and second degree
18 assault, and concluded that in applying the merger doctrine to the facts of the case, “to
19 prove first degree robbery as charged and proved by the State, the State had to prove the
20 defendants committed an assault in furtherance of the robbery.” 153 Wn.2d at 778. As
21 outlined in the analysis above, where the charge in this case was one of *attempted*
22 robbery, the State did not have to prove the assault in order to prove the crime of
23 *attempted* robbery and therefore the offenses do not merge.
24
25

2. MURDER IN THE FIRST DEGREE AND ATTEMPTED ROBBERY DO NOT VIOLATE DOUBLE JEOPARDY OR MERGER WHERE THE STATE ALLEGED, AND DEFENDANT PLED GUILTY TO, ATTEMPTING TO ROB TWO DIFFERENT VICTIMS.

The State incorporates by reference the double jeopardy law contained in section 1 of this brief.

Convicting a defendant of felony murder predicated on robbery and robbery in the first degree may violate double jeopardy principles if the robbery that is the basis of the murder is the same act as the robbery that is the basis of the first degree robbery charge. *See, State v. Williams*, 131 Wn. App. 488, 128 P.3d 98 (2006) (holding that felony murder predicated on first degree robbery merges with first degree robbery where the shooting that caused the death was inextricably linked to the robbery).

However, where different victims are involved, the offenses are different in fact and the double jeopardy and merger principles are not implicated. *See State v. Baldwin*, 150 Wn.2d 448, 457, 78 P.3d 1005 (2003), *citations omitted*, (“when offenses harm different victims, the offenses are not factually the same for purposes of double jeopardy.”).

Here, the State named D’Ann Jacobsen as the victim in the attempted robbery, and did not list a victim of the attempted robbery in the murder charge. (Appendix B). However, in the guilty plea defendant acknowledged that he was attempting to rob both D’Ann Jacobsen and Jason Lucas. (Appendix C). As the prosecutor’s statement on amended charges states, it already considered the possibility of merger or same criminal conduct, when dismissing one of the robbery counts. (Appendix F).

Defendant attempts to get around this argument by arguing that under the unit of prosecution test for robbery as outlined in *State v. Tvedt*, 153 Wn.2d 705, 107 P.3d 728 (2005) there is only one unit of prosecution here and therefore the two offenses cannot

1 stand. However, defendant's argument rests on a misunderstanding of the court's holding
2 in *Tvedt*.

3 In *Tvedt*, the Supreme Court clarified that the unit of prosecution for robbery is
4 "each separate forcible taking of property from or from the presence of a person having
5 an ownership, representative, or possessory interest in the property, against that person's
6 will." 153 Wn.2d at 715. Thus contrary to defendant's assertion, the number of persons
7 present at a robbery may be relevant for unit of prosecution where each person present
8 suffers a forcible taking of property. See *Tvedt, supra* (upholding two separate counts of
9 robbery of an Exxon where defendant forcibly took cash from one cashier and keys from
10 another person present; and, two separate counts of robbery of a Texaco station where
11 defendant took cash from the assistant manager and a cell phone from another person);
12 See also *State v. Turner*, 31 Wn. App. 843, 846-47, 644 P.2d 1224 (1982) (convictions
13 for two robberies were proper where the defendant took separate items of property from
14 separate persons at their home).

15 Turning to this case, defendant's unit of prosecution argument fails because all the
16 State had to show for both the murder and the robbery charge, was an "attempt" to
17 commit the crime of robbery. Defendant admitted that he attempted to rob both D'Ana
18 and Jason of personal property. Since defendant pled guilty, one may assume that he
19 acted with the belief that both D'Ana and Jason had money on their person and he took
20 substantial steps to accomplish the robbery. See (Appendix D – Statement of Defendant
21 on Plea of Guilty, "Quinn Spaulding convinced me to drive him out to Jason's so that he
22 could rob him of the money Jason & D'ann had recently gotten from her parents."
23 Emphasis added). Whether or not each had money on their person is immaterial for the
24 attempted crimes and convictions for both first degree murder and attempted first degree
25 robbery can stand.

1 3. DEFENDANT PLED GUILTY AND WAIVED THE DOUBLE
2 JEOPARDY ARGUMENT BEFORE THE COURT.

3 If this court determines that any of defendant's double jeopardy claims are not
4 apparent from the face of the judgment and record in this case, then this court should find
5 that defendant has waived his double jeopardy claims where he pled guilty. *State v.*
6 *Knight*, 162 Wn.2d 806, 811-12, 174 P.3d 1167 (2008); *See also In re Shale*, 160 Wn.2d
7 489, 593-94, 158 P.3d 588 (2007) (where four members of the court, in a concurring
8 opinion, outlined when a defendant may waive a double jeopardy challenge in the context
9 of collateral attacks on facially valid convictions); *United States v. Broce*, 488 U.S. 563,
10 575-76, 109 S. Ct. 757, 102 L. Ed. 2d 927 (1989) (a guilty plea prevents a defendant from
11 expanding the record to prove two convictions actually stem from a single conspiracy);
12 *Jeffers v. United States*, 432 U.S. 137, 154, 97 S. Ct. 2207, 53 L. Ed. 2d 168 (1977)
13 (defendant waived *double jeopardy* by opposing government's motion to join two
14 separate criminal prosecutor. Here, the defendant was originally facing charges of
15 murder in the first degree, assault in the first degree, and attempted robbery in the first
16 degree (2 counts). (Appendix C – Amended Information). Conservatively, if the court
17 counted as least two of the other currents in each offender score calculation, defendant's
18 standard range sentence for murder would jump from 261-347, to 281-374, and on the
19 assault charge from 12-14 months, to 129-171 months, and the robbery from 40 ½ to 51-
20 68 months. (See 1995 Sentencing Guideline Commission Sheets – Appendix E). The
21 State agreed to reduce the charges to murder in the first degree, assault in the second
22 degree, and attempted robbery in the first degree, upon consideration that defendant
23 would plead guilty to those charges. Having entered into this bargain with the State, and
24 the double jeopardy argument not being obvious on the face of the judgment (See
25 argument *supra* regarding “substantial step” facts), the defendant should be bound to the
 agreement entered with the State and has waived any double jeopardy argument.

1 4. THE REMEDY FOR THE ALLEGED DOUBLE JEOPARDY
2 VIOLATION IS VACATION OF THOSE CONVICTIONS
3 WHICH VIOLATE DOUBLE JEOPARDY AND NOT
4 WITHDRAWAL OF THE ENTIRE PLEA.

5 If the defendant should prevail on any of his double jeopardy claims, the remedy
6 for the double jeopardy violation is vacation of the conviction which violates double
7 jeopardy, and not as defendant suggests, withdrawal of the entire plea.

8 There are three potential remedies a defendant may try to request when
9 challenging a plea entered in violation of double jeopardy:

- 10 1. I want to withdraw a portion of my plea which violates double
11 jeopardy and leave the rest of the plea intact. See *In re Shale*, 160
12 Wn.2d 489, 158 P.3d 588 (2007) (rejects this argument and holds
13 that a defendant may not challenge a portion of the plea agreement
14 where the agreement is part of an indivisible package).
- 15 2. I want to have the court vacate those convictions which violate
16 double jeopardy but leave the rest of the plea agreement in tact.
17 *State v. Knight*, 162 Wn.2d 806, 811, 174 P.3d 1167 (2008)
18 (holding a guilty plea need not be withdrawn where double
19 jeopardy is at issue because guilty plea, like jury verdicts, do not
20 violate double jeopardy).
- 21 3. I want to withdraw my entire plea agreement and have all of the
22 convictions vacated due to double jeopardy violations. (This is the
23 remedy defendant puts forth, without any legal authority).


24 The proper remedy is the one outlined in paragraph (2) above. The double jeopardy
25 violations do not affect the validity of the plea. See *State v. Knight*, *supra*; *State v.*
Womac, 160 Wn.2d 643, 658-660, 160 P.3d 40 (2007) (recognizing that in double
jeopardy analysis, it is not the charge, plea, or jury verdict that violates double jeopardy
but the entry of the judgment). Defendant has never outlined to this court that his position
is that his plea is involuntary and he should be allowed to withdraw his plea. For this
reason, the proper remedy is vacation of only those convictions which violate double
jeopardy and leave the remaining convictions in tact.

1 E. CONCLUSION:

2 This court should dismiss this petition as untimely. There are no double jeopardy
3 violations that occurred here which permit vacation of the convictions. Even if there are
4 double jeopardy issues, the proper remedy is vacation of only those convictions which
5 violate double jeopardy.
6

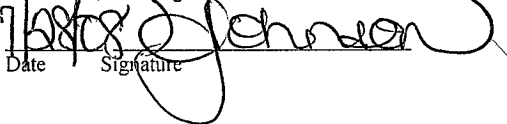
7 DATED: July 28, 2008.

8 GERALD A. HORNE
9 Pierce County Prosecuting Attorney

10 
11 MICHELLE LUNA-GREEN
12 Deputy Prosecuting Attorney
13 WSB # 27088

14 Certificate of Service:

15 The undersigned certifies that on this day she delivered by U.S. mail
16 to the petitioner a true and correct copy of the document to which this
17 certificate is attached. This statement is certified to be true and correct
18 under penalty of perjury of the laws of the State of Washington. Signed
19 at Tacoma, Washington, on the date below.

20 
21 Date Signature

22
23
24
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FILED
COURT OF APPEALS
DIVISION II
08 JUL 28 PM 4:17
STATE OF WASHINGTON
BY
DEPUTY

APPENDIX “A”

Judgment and Sentence

FILED
DEPT. 14
IN OPEN COURT

MAY 30 1996

Pierce County Clerk
By *[Signature]* DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

SHAWN DOMINIQUE FRANCIS,

Defendant.

CAUSE NO. 95-1-05023-1

WARRANT OF COMMITMENT

- 1) ☐ County Jail
2) ☒ Dept. of Corrections
3) ☐ Other - Custody

MAY 30 1996

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF
PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the
Superior Court of the State of Washington for the County of Pierce,
that the defendant be punished as specified in the Judgment and
Sentence/Order Modifying/Revoking Probation/Community Supervision, a
full and correct copy of which is attached hereto.

☐ 1. YOU, THE DIRECTOR, ARE COMMANDED to receive
the defendant for classification,
confinement and placement as ordered in the
Judgment and Sentence. (Sentence of
confinement in Pierce County Jail).

☒ 2. YOU, THE DIRECTOR, ARE COMMANDED to take and
deliver the defendant to the proper officers
of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT
OF CORRECTIONS, ARE COMMANDED to receive the
defendant for classification, confinement
and placement as ordered in the Judgment and
Sentence. (Sentence of confinement in
Department of Corrections custody).

95-1-05023-1

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 5-30-96

By direction of the Honorable

FILED
DEPT. 14
IN OPEN COURT

JUDGE
BRUCE W. COHOE

MAY 30 1996

Pierce County Clerk
By: [Signature] DEPUTY

TED RUTT
CLERK
By: [Signature] DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

Date 5/30/96 By [Signature] Deputy

STATE OF WASHINGTON, County of Pierce
ss: I, Ted Rutt, Clerk of the above
entitled Court, do hereby certify that
this foregoing instrument is a true and
correct copy of the original now on file
in my office.

IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of Said Court this
_____ day of _____, 19__.

TED RUTT, Clerk

By: _____ Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

SHAWN DOMINIQUE FRANCIS,

Defendant.

DOB: 9-19-77
SID NO.: WA17745851
LOCAL ID:

CAUSE NO. 95-1-05023-1

JUDGMENT AND SENTENCE
(FELONY)

MAY 30 1996

FILED
DEPT. 14
IN OPEN COURT

MAY 30 1996

Pierce County Clerk
By: _____
DEPUTY

I. HEARING

1.1 A sentencing hearing in this case was held on 5-30-96.

1.2 The defendant, the defendant's lawyer, MICHAEL DANKO, and the deputy prosecuting attorneys, EDMUND MURPHY AND KEVIN BENTON, were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSES(S): The defendant was found guilty on April 10, 1996, by

☒ plea ☐ jury-verdict ☐ bench trial of:

Count No.: I
Crime: MURDER IN THE FIRST DEGREE, Charge Code: (D3)
RCW: 9A.32.030(1)(c)
Date of Crime: November 4, 1995
Incident No.: Puyallup PD 95-7739

Count No.: II
Crime: ASSAULT IN THE SECOND DEGREE, Charge Code: (E28)
RCW: 9A.36.021(1)(c)
Date of Crime: November 4, 1995

JUDGMENT AND SENTENCE
(FELONY) - 1

ENTERED
JUDGEMENT

96-9-04586-2

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: 591-7400

95-1-05023-1

Incident No.: Puyallup PD 95-7739Count No.: IIICrime: ATTEMPTED ROBBERY IN THE FIRST DEGREE, Charge Code:
(AAA4)RCW: 9A.56.190, 9A.56.200(1)(c), and 9A.28.020Date of Crime: November 4, 1995Incident No.: Puyallup PD 95-7739

- [] Additional current offenses are attached in Appendix 2.1.
- [] A special verdict/finding for use of deadly weapon was returned on Count(s).
- [] A special verdict/finding of sexual motivation was returned on Count(s).
- [] A special verdict/finding of a RCW 69.50.401(a) violation in a school bus, public transit vehicle, public park, public transit shelter or within 1000 feet of a school bus route stop or the perimeter of a school grounds (RCW 69.50.435).
- [] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

- [X] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):
- COUNT II: ASSAULT IN THE SECOND DEGREE, AND COUNT III: ATTEMPTED ROBBERY IN THE FIRST DEGREE

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

<u>Crime</u>	<u>Sentencing Date</u>	<u>Adult or Juv. Crime</u>	<u>Date of Crime</u>	<u>Crime Type</u>
RES. BURGLARY (X2)	10-6-95	JUVENILE	1-20-95	NV

- [] Additional criminal history is attached in Appendix 2.2.
- [] Prior convictions served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(11)):

2.3 SENTENCING DATA:

JUDGMENT AND SENTENCE
(FELONY) - 2

95-1-05023-1

	Offender Score	Seriousness Level	Range Months	Maximum Years
Count No. I:	2	XIV	261-347	LIFE
Count No. II:	2	IV	12+ - 14	TEN
Count No. III:	2	IX	30.75-40.5	TEN

[] Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE:

[] Substantial and compelling reasons exist which justify a sentence [] above [] below the standard range for Count(s)____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [] did [] did not recommend a similar sentence.

2.5 RECOMMENDED AGREEMENTS:

[X] For violent offenses, serious violent offenses, most serious offenses, or any felony with a deadly weapon special verdict under RCW 9.94A.125; any felony with any deadly weapon enhancements under RCW 9.94A.310(3) or (4) or both; and/or felony crimes of possession of a machine gun, possessing a stolen firearm, reckless endangerment in the first degree, theft of a firearm, unlawful possession of a firearm in the first or second degree, and/or use of a machine gun, the recommended sentencing agreements or plea agreements are [] attached [X] as follows:

COUNT I: 347 MONTHS IN DOC; COUNT II: 14 MONTHS IN DOC; COUNT III: 40.5 MONTHS IN DOC; ALL CONCURRENT

2.6 RESTITUTION:

[] Restitution will not be ordered because the felony did not result in injury to any person or damage to or loss of property.
☒ Restitution should be ordered. ~~A hearing is set for _____.~~
 [] Extraordinary circumstances exist that make restitution inappropriate. The extraordinary circumstances are set forth in Appendix 2.5.

2.7 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS: The court has considered the defendant's past, present and future ability to pay

JUDGMENT AND SENTENCE
(FELONY) - 3

95-1-05023-1

legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court specifically finds that the defendant has the ability to pay:

- ☐ no legal financial obligations.
- ☒ the following legal financial obligations:
 - ☒ crime victim's compensation fees.
 - ☐ court costs (filing fee, jury demand fee, witness costs, sheriff services fees, etc.)
 - ☐ county or interlocal drug funds.
 - ☐ court appointed attorney's fees and cost of defense.
 - ☐ fines.
 - ☐ other financial obligations assessed as a result of the felony conviction.

A notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender, if a monthly court-ordered legal financial obligation payment is not paid when due and an amount equal to or greater than the amount payable for one month is owed.

THE FINANCIAL OBLIGATIONS IMPOSED IN THIS JUDGMENT SHALL BEAR INTEREST FROM THE DATE OF THE JUDGMENT UNTIL PAYMENT IN FULL, AT THE RATE APPLICABLE TO CIVIL JUDGMENTS. RCW 10.82.090. AN AWARD OF COSTS ON APPEAL AGAINST THE DEFENDANT MAY BE ADDED TO THE TOTAL LEGAL FINANCIAL OBLIGATIONS. RCW 10.73.

2.8 SPECIAL FINDINGS PURSUANT TO RCW 9.94A.120:

- ☐ The defendant is a first time offender (RCW 9.94A.030(20)) who shall be sentenced under the waiver of the presumptive sentence range pursuant to RCW 9.94A.120(5).
- ☐ The defendant is a sex offender who is eligible for the special sentencing alternative under RCW 9.94A.120(7)(a). The court has determined, pursuant to RCW 9.94A.120(7)(a)(ii), that the special sex offender sentencing alternative is appropriate.

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 ☐ The court DISMISSES.

JUDGMENT AND SENTENCE
(FELONY) - 4

95-1-05023-1

IV. SENTENCE AND ORDER.

IT IS ORDERED:

4.1 LEGAL FINANCIAL OBLIGATIONS. Defendant shall pay to the Clerk of this Court:

\$ 60,542.04, Restitution, to be paid as follows:

- ① \$918.36 to Dael and Lori Lucas; P.O. Box 446; Revere, WA 98051
 ② \$1,127.00 to Crime Victim Comp.; P.O. Box 44520; Olympia, WA 98521
Re: VH29830; Lucas J.
 ③ \$58,496.68 to Benefit Administrators of New England
P.O. Box 557; Rockland, MA 02370 Re: 533-52-7465

\$ _____, Court costs (filing fee, jury demand fee, witness costs, sheriff service fees, etc.);

\$ 100.00, Victim assessment;

\$ _____, Fine; [] VUCSA additional fine waived due to indigency (RCW 69.50.430);

\$ _____, Fees for court appointed attorney;

\$ _____, Washington State Patrol Crime Lab costs;

\$ _____, Drug enforcement fund of _____;

\$ _____, Other costs for: _____;

\$ 60,642.04, TOTAL legal financial obligations ☒ including restitution [] not including restitution.Payments shall not be less than \$ _____ per month. Payments shall commence on _____. *To be set by CCO*☒ Restitution ordered above shall be paid jointly and severally with:

Name	Cause Number
<u>Quinn Laford Spaulding</u>	<u>95-1-05063-0</u>

The defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement to assure payment of the above monetary obligations.

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(FELONY) - 5

95-1-05023-1

Any period of supervision shall be tolled during any period of time the offender is in confinement for any reason.

Defendant must contact the Department of Corrections at 755 Tacoma Avenue South, Tacoma upon release or by _____.

[] Bond is hereby exonerated.

JUDGMENT AND SENTENCE
(FELONY) - 6

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: 591-7400

95-1-05023-1

4.2 CONFINEMENT OVER ONE YEAR: The court imposes the following sentence:

(a) CONFINEMENT: Defendant is sentenced to following term of total confinement in the custody of the Department of Corrections commencing Immediately.

347 months on Count No. I ☒ concurrent ☐ consecutive
14 months on Count No. II ☒ concurrent ☐ consecutive
40 1/2 months on Count No. III ☒ concurrent ☐ consecutive

☒ Actual number of months of total confinement ordered is: 347

☐ This sentence shall be ☐ concurrent ☐ consecutive with the sentence in _____;

☒ Credit is given for 205 days served;

(b) ☒ COMMUNITY PLACEMENT (RCW 9.94A.120(9)(b)). The defendant is sentenced to community placement for ☐ one year ☒ two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer. The offender shall comply with the following terms of community placement:

WHILE ON COMMUNITY PLACEMENT OR COMMUNITY CUSTODY, THE DEFENDANT SHALL: 1) REPORT TO AND BE AVAILABLE FOR CONTACT WITH THE ASSIGNED COMMUNITY CORRECTIONS OFFICER AS DIRECTED; 2) WORK AT DEPARTMENT OF CORRECTIONS-APPROVED EDUCATION, EMPLOYMENT AND/OR COMMUNITY SERVICE; 3) NOT CONSUME CONTROLLED SUBSTANCES EXCEPT PURSUANT TO LAWFULLY ISSUED PRESCRIPTIONS; 4) NOT UNLAWFULLY POSSESS CONTROLLED SUBSTANCES WHILE IN COMMUNITY CUSTODY; 5) PAY SUPERVISION FEES AS DETERMINED BY THE DEPARTMENT OF CORRECTIONS; 6) RESIDENCE LOCATION AND LIVING ARRANGEMENTS ARE SUBJECT TO THE APPROVAL OF THE DEPARTMENT OF CORRECTIONS DURING THE PERIOD OF COMMUNITY PLACEMENT; 7) DO NOT OWN, USE OR POSSESS FIREARMS OR AMMUNITION.

(a) ☐ The offender shall not consume any alcohol;

(b) ☒ The offender shall have no contact with: D'Ann Jacobsen
or the immediate family of Jason Lucas

(c) ☐ The offender shall remain ☐ within or ☐ outside of a specified geographical boundary, to-wit: _____

(d) ☐ The offender shall participate in the following crime related treatment or counseling services: _____

(e) ☐ The defendant shall comply with the following crime-related prohibitions: _____

SENTENCE OVER ONE YEAR - 1

95-1-05023-1

(f) ☒ OTHER SPECIAL CONDITIONS AND CRIME RELATED PROHIBITIONS:

Provide urine samples or breath samples for
testing, as directed by the assigned Community Corrections
officer

(g) [] HIV TESTING. The Health Department or designee shall test the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. (RCW 70.24.340)

(h) ☒ DNA TESTING. The defendant shall have a blood sample drawn for purpose of DNA identification analysis. The Department of Corrections shall be responsible for obtaining the sample prior to the defendant's release from confinement. (RCW 43.43.754)

[] PURSUANT TO 1993 LAWS OF WASHINGTON, CHAPTER 419, IF THIS OFFENDER IS FOUND TO BE A CRIMINAL ALIEN ELIGIBLE FOR RELEASE AND DEPORTATION BY THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, SUBJECT TO ARREST AND REINCARCERATION IN ACCORDANCE WITH THIS LAW, THEN THE UNDERSIGNED JUDGE AND PROSECUTOR CONSENT TO SUCH RELEASE AND DEPORTATION PRIOR TO THE EXPIRATION OF THE SENTENCE.

EACH VIOLATION OF THIS JUDGMENT AND SENTENCE IS PUNISHABLE BY UP TO 60 DAYS OF CONFINEMENT. (RCW 9.94A.200(2)).

ANY DEFENDANT CONVICTED OF A SEX OFFENSE MUST REGISTER WITH THE COUNTY SHERIFF FOR THE COUNTY OF THE DEFENDANT'S RESIDENCE WITHIN 24 HOURS OF DEFENDANT'S RELEASE FROM CUSTODY. RCW 9A.44.130.

PURSUANT TO RCW 10.73.090 AND 10.73.100, THE DEFENDANT'S RIGHT TO FILE ANY KIND OF POST SENTENCE CHALLENGE TO THE CONVICTION OR THE SENTENCE MAY BE LIMITED TO ONE YEAR.

Date: 5-30-96

FILED
DEPT 14
IN OPEN COURT

JUDGE

Bruce W. Cohoe
BRUCE W. COHOE

Presented by:

Approved as to form:

[Signature]
Deputy Prosecuting Attorney

WSB # 14754

MAY 30 1996

Pierce County Clerk
By [Signature] DEPUTY

[Signature]
Lawyer for Defendant

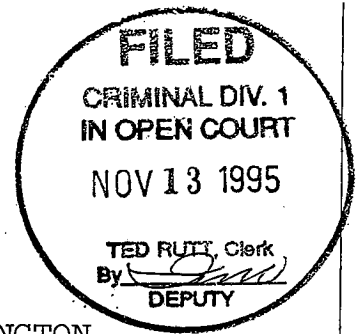
WSB # 14712

SENTENCE OVER ONE YEAR - 2

CERTIFIED COPY

APPENDIX “B”

Amended Information and Declaration of Probable Cause



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

NOV 14 1995

STATE OF WASHINGTON,

CAUSE NO. 95-1-05023-1

Plaintiff,

AMENDED INFORMATION

vs.

Domenique
 SEAN DOMINIGUE FRANCIS,

Defendant.

DOB: 9-19-77 W/M

SS#: 585-29-8289

SID#:

DOL#:

QUINN LAFORD SPAULDING

I, JOHN W. LADENBURG, Prosecuting Attorney for Pierce County, in
the name and by the authority of the State of Washington, do accuse
SEAN DOMINIGUE FRANCIS and QUINN LAFORD SPAULDING of the crime of
MURDER IN THE FIRST DEGREE, committed as follows:

That SEAN DOMINIGUE FRANCIS and QUINN LAFORD SPAULDING, in Pierce
County, Washington, on or about the 4th day of November, 1995, did
unlawfully and feloniously while committing or attempting to commit
the crime of ROBBERY IN THE FIRST DEGREE, and in the course of and
furtherance of said crime or in immediate flight therefrom, SEAN
DOMINIGUE FRANCIS or another participant struck Jason Lucas, a human
being, not a participant in such crime, thereby causing the death of
Jason Lucas, on or about the 8th day of November, 1995, contrary to

CERTIFIED COPY

INFORMATION - 1

ORIGINAL

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2 RCW 9A.32.030(1)(c), and against the peace and dignity of the State of
3 Washington.

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COUNT II

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do
accuse SEAN DOMINIGUE FRANCIS of the crime of ASSAULT IN THE FIRST
DEGREE, a crime of the same or similar character, and/or so closely
connected in respect to time, place and occasion that it would be
difficult to separate proof of one charge from proof of the others,
committed as follows:

That SEAN DOMINIGUE FRANCIS, in Pierce County, Washington, on or
about the 4th day of November, 1995, did unlawfully and feloniously
with intent to inflict great bodily harm, assault D'Ann Jacobsen with
a deadly weapon or by any force or means likely to produce great
bodily harm or death, contrary to RCW 9A.36.011(1)(a), and against the
peace and dignity of the State of Washington.

COUNT III

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do
accuse SEAN DOMINIGUE FRANCIS and QUINN LAFORD SPAULDING of the crime
of ATTEMPTED ROBBERY IN THE FIRST DEGREE, a crime based on the same
conduct or series of acts connected together, and/or so closely
connected in respect to time, place and occasion that it would be
difficult to separate proof of one charge from proof of the others,
committed as follows:

That SEAN DOMINIGUE FRANCIS and QUINN LAFORD SPAULDING, in Pierce
County, Washington, on or about the 4th day of November, 1995, did

INFORMATION - 2

1
2 unlawfully and feloniously intend to commit the crime of ROBBERY IN
3 THE FIRST DEGREE and performed an act which was a substantial step
4 toward the taking of personal property with intent to steal from the
5 person or in the presence of Jason Lucas, against such person's will
6 by use or threatened use of immediate force, violence, or fear of
7 injury to Jason Lucas, and in the commission thereof, or in immediate
8 flight therefrom SEAN DOMINIGUE FRANCIS or an accomplice inflicted
9 bodily injury upon Jason Lucas, contrary to RCW 9A.28.020, 9A.56.190
10 and 9A.56.200(1)(c), and against the peace and dignity of the State of
11 Washington.

12 COUNT IV

13 And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do
14 accuse SEAN DOMINIGUE FRANCIS and QUINN LAFORD SPAULDING of the crime
15 of ATTEMPTED ROBBERY IN THE FIRST DEGREE, a crime based on the same
16 conduct or series of acts connected together, and/or so closely
17 connected in respect to time, place and occasion that it would be
18 difficult to separate proof of one charge from proof of the others,
19 committed as follows:

20 That SEAN DOMINIGUE FRANCIS and QUINN LAFORD SPAULDING, in Pierce
21 County, Washington, on or about the 4th day of November, 1995, did
22 unlawfully and feloniously intend to commit the crime of ROBBERY IN
23 THE FIRST DEGREE and performed act which was a substantial step toward
24 the taking of personal property with intent to steal from the person
25 or in the presence of D'Ann Jacobsen, against such person's will by
26 use or threatened use of immediate force, violence, or fear of injury
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28 INFORMATION - 3

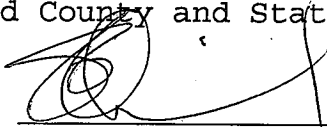
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2 to D'Ann Jacobsen, and in the commission thereof, or in immediate
3 flight therefrom the SEAN DOMINIGUE FRANCIS or an accomplice inflicted
4 bodily injury upon D'Ann Jacobsen, contrary to RCW 9A.28.020,
5 9A.56.190 and 9A.56.200(1)(c), and against the peace and dignity of
6 the State of Washington.

7 DATED this 8th day of November, 1995.

8
9 Puyallup Case
WA02701

JOHN W. LADENBURG
Prosecuting Attorney in and for
said County and State.

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11 sm

By: 
Steve Merrival
Deputy Prosecuting Attorney
WSB #11908


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28 INFORMATION - 4

1 Sean Francis is 5'9" tall and weighs 145 pounds. Quinn Spaulding
 2 is shorter and heavier set. D'Ann Jacobsen told police that both of
 3 the suspects had baseball bats. Jacobsen also said the person that hit
 4 her was probably around 5'8", and the one that hit Jason was probably
 5 a little bit smaller.

6 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
 7 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

8 DATED: November 13, 1995.

9 PLACE: TACOMA, WASHINGTON

10 
 11 Steve Merrival, WSB# 11908

12 sm

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22 STATE OF WASHINGTON, County of Pierce
 23 ss: I, Kevin Stock, Clerk of the above
 24 entitled Court, do hereby certify that this
 25 foregoing instrument is a true and correct
 26 copy of the original now on file in my office.
 27 IN WITNESS WHEREOF, I hereunto set my
 28 hand and the Seal of said Court this

day of Jul 28, 2000

Kevin Stock, Clerk

By  Deputy

27 AFFIDAVIT FOR DETERMINATION
 28 OF PROBABLE CAUSE - 2

CERTIFIED COPY

Office of Prosecuting Attorney
 930 Tacoma Avenue South, Room 946
 Tacoma, Washington 98402-2171
 Main Office: (206) 591-7400

APPENDIX “C”

Second Amended Information

FILED
DEPT. 14
IN OPEN COURT

APR 10 1996

Pierce County Clerk

DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

SHAWN DOMINIQUE FRANCIS,

Defendant.

CAUSE NO. 95-1-05023-1

SECOND AMENDED INFORMATION

APR 10 1996

I, JOHN W. LADENBURG, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse SHAWN DOMINIQUE FRANCIS of the crime of MURDER IN THE FIRST DEGREE, committed as follows:

That SHAWN DOMINIQUE FRANCIS, in Pierce County, Washington, on or about the 4th day of November, 1995, did unlawfully and feloniously while committing or attempting to commit the crime of Robbery in the First Degree, and in the course of and furtherance of said crime or in immediate flight therefrom, Shawn Dominique Francis struck Jason Lucas, a human being, not a participant in such crime, in the head with a baseball bat, thereby causing the death of Jason Lucas, on or about the 8th day of November, 1995, contrary to RCW 9A.32.030(1)(c), and against the peace and dignity of the State of Washington.

SECOND AMENDED INFORMATION - 1

CERTIFIED COPY

ORIGINAL

Office of Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (206) 591-7400

COUNT II

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse SHAWN DOMINIQUE FRANCIS of the crime of ASSAULT IN THE SECOND DEGREE, a crime of the same or similar character, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That SHAWN DOMINIQUE FRANCIS, in Pierce County, Washington, on or about the 4th day of November, 1995, did unlawfully and feloniously assault D'Ann Jacobsen with a deadly weapon, to-wit: a baseball bat, contrary to RCW 9A.36.021(1)(c), and against the peace and dignity of the State of Washington.

COUNT III

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse SHAWN DOMINIQUE FRANCIS of the crime of ATTEMPTED ROBBERY IN THE FIRST DEGREE, a crime of the same or similar character, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:


That SHAWN DOMINIQUE FRANCIS, in Pierce County, Washington, on or about the 4th day of November, 1995, did unlawfully and feloniously intend to commit the crime of Robbery in the First Degree and performed an act which was a substantial step toward the taking of personal property with intent to steal from the person or in the presence of D'Ann Jacobsen, against such person's will by use or

threatened use of immediate force, violence, or fear of injury to D'Ann Jacobsen, and in the commission thereof, or in immediate flight therefrom Shawn Dominique Francis inflicted bodily injury upon D'Ann Jacobsen, contrary to RCW 9A.56.190, 9A.56.200(1)(c), and 9A.28.020, and against the peace and dignity of the State of Washington.


DATED this 10th day of April, 1996.

JOHN W. LADENBURG
Prosecuting Attorney in and for
said County and State.

By:


EDMUND MURPHY
Deputy Prosecuting Attorney
WSB #14754

STATE OF WASHINGTON, County of Pierce
ss: I, Kevin Stock, Clerk of the above
entitled Court, do hereby certify that this
foregoing instrument is a true and correct
copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of said Court this

day of JUL 28 2008
Kevin Stock, Clerk
By  Deputy

SECOND AMENDED INFORMATION - 3

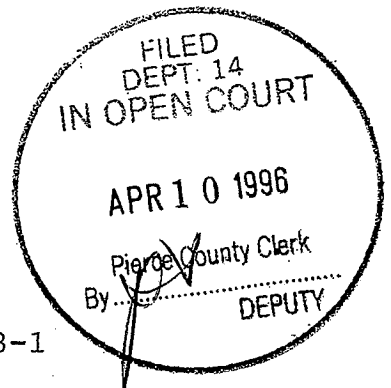
CERTIFIED COPY

Office of Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (206) 591-7400

APPENDIX “D”

Guilty Plea

SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY



THE STATE OF WASHINGTON,

Plaintiff,

vs.

NO. 95-1-05023-1

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY

PN _____

SHAWN D. FRANCIS

Defendant.

APR 10 1996

1. My true name is SHAWN D. FRANCIS
2. My age is 18
3. I went through the 11 grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:
I have the right to be represented by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is Michael Danko

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

- (a) The right to a speedy trial and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me.
- (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty.
- (f) The right to appeal a determination of guilt after a trial.

6. I am charged with the following: _____

Count I MURDER IN THE FIRST DEGREE

Elements: Did strike and cause the death of Jason Lucas while attempting
to commit the crime of Robbery in the First Degree on November 4, 1995
in the State of Washington. That Jason Lucas was not a participant in
the said crime of Attempted Robbery in the First Degree. Jason Lucas died

Maximum Penalty LIFE ; \$50,000 Standard Range 261-347 months

11/8/95

CERTIFIED COPY

Count III Attempted Robbery In The First Degree - on 11/4/95 in state of WA.

Elements: Did perform a substantial step toward the taking of personal property with intent to steal from the ~~presence~~^{person} of or in the presence of D'Ann Jacobsen, against D'Ann Jacobsen will by use of force, violence or fear, and in the commission of the offense did inflict bodily injury on D'Ann Jacobsen

Maximum Penalty 10 yrs, \$20,000 Standard Range 30.75 - 40.5 months

Count II

Elements: Assault in the Second Degree - did assault D'Ann Jacobsen with a deadly weapon, to wit: a baseball bat, on 11/4/95, in the state of Washington.

Maximum Penalty 10 yrs, \$20,000 Standard Range 12+ - 14 months

7. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

- (a) The standard sentencing range is based on the crime I am pleading guilty to and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes juvenile court convictions as follows: convictions for sex offenses, any class A juvenile felony only if I was 15 or older at the time the juvenile offense was committed, any class B and C juvenile felony convictions only if I was 15 or older at the time the juvenile offense was committed and I was less than 23 years old when I committed the crime to which I am now pleading guilty.
- (b) The prosecuting attorney's statement of my criminal history for sentencing is as follows:

Residential Burglary (2x) - Juvenile offense - Violation 1/20/95

Sentenced 10/6/95

Unless I attach a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced I am obligated to tell the sentencing judge about those convictions.

- (c) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this crime is binding on me. I cannot change my mind even if additional criminal history is discovered and even though the standard sentencing range and the prosecuting attorney's recommendation increase.

(d) In addition to sentencing me to confinement within the standard range, the judge will order me to pay \$100 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration up to \$50 per day. Furthermore, the judge may place me on community supervision, impose restrictions on my activities, and order me to perform community service.

(e) The prosecuting attorney will make the following recommendations to the judge:

Ct 1: 347 months Ct 2: 14 months; Ct 3: 40.5 months

(all concurrent)

\$100 Crime Victim Compensation

\$110 Court Costs

Restitution

2yrs. community placement (Count I) with conditions

DNA testing

[] The prosecuting attorney will make the recommendations set forth in the plea agreement which is incorporated herein by reference.

(f) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard sentencing range unless the judge finds substantial and compelling reasons not to do so. If the judge goes above or below the standard sentence range, either I or the State can appeal that sentence. If the sentence is within the standard sentence range, no one can appeal the sentence.

(g) I understand that if I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

8. IF ANY OF THE FOLLOWING BOXED PARAGRAPHS DO NOT APPLY THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE.

(a) The judge may sentence me as a first time offender instead of giving a sentence within the standard range if I qualify under RCW 9A.030(20). This sentence could include as much as 90 days' confinement plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training, and to maintain law abiding behavior.	S.F.
(b) I am being sentenced for two or more violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.	S.F.
(c) The crime of <u>Murder in the First Degree</u> has a mandatory minimum sentence of at least <u>20</u> years of total confinement. The law does not allow any reduction of this sentence.	

(d) This plea of guilty will result in revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge.	S.F.
(e) In addition to confinement, the judge will sentence me to community placement for at least one year. During the period of community placement I will be under the supervision of the Department of Corrections and I will have restrictions placed on my activities.	
(f) Because this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis.	
(g) Because this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus.	S.F.
(h) Because this crime involves a sex offense, I will be required to register with the sheriff of the county of the state of Washington where I reside. I must register immediately upon being sentenced unless I am in custody, in which case I must register within 24 hours of my release. If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections. If I change my residence within a county, I must send written notice of my change of residence to the sheriff within 10 days of establishing my new residence. If I change my residence to a new county within this state, I must register with the sheriff of the new county and notify the sheriff of the county where I last registered, both within 10 days of establishing my new residence.	S.F.

9. I plead guilty to the crime(s) of Murder in the First Degree, Attempted Robbery 1st, Assault 2nd
as charged in the Amended information. I have received a copy of the information.

10. I make this plea freely and voluntarily.

11. No one has threatened any harm to me or to any other person to cause me to enter this plea.

12. No person has made any promises of any kind to cause me to enter this plea except as set forth in this statement.

13. The judge has asked me to state briefly in my own words what I did that makes me guilty of this crime. This is my statement:

In XXXXXXXXXXXX Pierce County WA On Nov. 4, 1995 I struck Jason Lucas with a
bat while attempting to rob Jason.
When he didn't fall down, I struck him again. D'Ann Jacobsen was with
him and when she screamed I swung the bat at her and hit her. I acknowledge
my actions constitute a substantial step toward robbing her and Jason. Quinn
Spaulding convinced me to drive him out to Jason's so that he could rob him
of the money Jason & D'ann had recently gotten from her parents. When Jason
came home, Quinn threatened to kill me if I didn't attack Jason. I know that
Jason died as a result of my striking him. I am very sorry for what I did
and wish I would have confronted Quinn instead.

14. Pursuant to RCW 10.73.090 and 10.73.100, I understand that my right to file any kind of post sentence challenge to the conviction or the sentence may be limited to one year.
15. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask of the judge.

Shawn D. [Signature]
Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands this statement.

[Signature]
Attorney for Defendant 14754

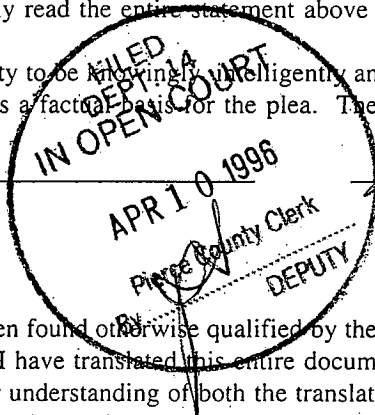
[Signature] 14754
Deputy Prosecuting Attorney

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that:

- [] (a) The defendant had previously read; or
- [] (b) The defendant's lawyer had previously read to him or her; or
- [] (c) An interpreter had previously read the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

DATED: 4-10-96



[Signature]
Judge

BRUCE W. COHOE

*I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language which the defendant understands, and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this _____ day of _____, 19____.

Interpreter

STATE OF WASHINGTON, County of Pierce
ss: I, Kevin Stock, Clerk of the above
entitled Court, do hereby certify that this
foregoing instrument is a true and correct
copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of said Court this
day of APR 28 2000, 20____
Kevin Stock, Clerk
By [Signature] Deputy

CERTIFIED COPY

APPENDIX “E”

1995 Sentencing Guideline

MURDER, FIRST DEGREE

(RCW 9A.32.030)

CLASS A FELONY

SERIOUS VIOLENT

(If sexual motivation finding/verdict, use form on page III-33)

I. OFFENDER SCORING (RCW 9.94A.360 (10))

ADULT HISTORY:

(If the prior offense was committed before 7/1/86, count prior adult offenses served concurrently as one offense; those served consecutively are counted separately. If both current and prior offenses were committed after 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of serious violent felony convictions x 3 = _____

Enter number of violent felony convictions x 2 = _____

Enter number of nonviolent felony convictions x 1 = _____

JUVENILE HISTORY: (Adjudications entered on the same date count as one offense except for violent offenses with separate victims)

Enter number of serious violent felony adjudications x 3 = _____

Enter number of violent felony adjudications x 2 = _____

Enter number of nonviolent felony adjudications x 1/2 = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of violent felony convictions x 2 = _____

Enter number of nonviolent felony convictions x 1 = _____

STATUS: Was the offender on community placement on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the **Offender Score**
(Round down to the nearest whole number)

--

II. SENTENCE RANGE

A. OFFENDER SCORE:

STANDARD RANGE
(LEVEL XIV)

0	1	2	3	4	5	6	7	8	9 or more
240 - 320 months	250 - 333 months	261 - 347 months	271 - 361 months	281 - 374 months	291 - 388 months	312 - 416 months	338 - 450 months	370 - 493 months	411 - 548 months

B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.410).

C. Twenty-four months community placement must be served following release from state prison (RCW 9.94A.120).

D. Statutory minimum sentence is 240 months (20 years) (RCW 9.94A.120 (4)).

E. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-17 or III-18 to calculate the enhanced sentence.

ASSAULT, SECOND DEGREE

(RCW 9A.36.021)

CLASS B FELONY

VIOLENT

(If sexual motivation finding/verdict, use form on page III-35)

I. OFFENDER SCORING (RCW 9.94A.360 (9))

ADULT HISTORY:

(If the prior offense was committed *before* 7/1/86, count prior adult offenses served concurrently as one offense; those served consecutively are counted separately. If both current and prior offenses were committed *after* 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of serious violent and violent felony convictions $\times 2 =$ _____

Enter number of nonviolent felony convictions $\times 1 =$ _____

JUVENILE HISTORY: (Adjudications entered on the same date count as one offense except for violent offenses with separate victims)

Enter number of serious violent and violent felony adjudications $\times 2 =$ _____

Enter number of nonviolent felony adjudications $\times 1/2 =$ _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other serious violent and violent felony convictions $\times 2 =$ _____

Enter number of nonviolent felony convictions $\times 1 =$ _____

STATUS: Was the offender on community placement on the date the current offense was committed? (if yes), $+ 1 =$ _____

Total the last column to get the Offender Score
(Round down to the nearest whole number)

--

II. SENTENCE RANGE

A. OFFENDER SCORE:

STANDARD RANGE
(LEVEL IV)

0	1	2	3	4	5	6	7	8	9 or more
3 - 9 months	6 - 12 months	12+ - 14 months	13 - 17 months	15 - 20 months	22 - 29 months	33 - 43 months	43 - 57 months	53 - 70 months	63 - 84 months

B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.410).

C. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-17 or III-18 to calculate the enhanced sentence.

D. One year of community placement must be served following release from state prison (RCW 9.94A.120).

III. SENTENCING OPTIONS

A. If sentence is one year or less: part or all of the sentence may be converted to partial confinement (RCW 9.94A.380).

B. If sentence is one year or less: community supervision may be ordered for up to one year (RCW 9.94A.383).

ROBBERY, FIRST DEGREE

(RCW 9A.56.200)

CLASS A FELONY

VIOLENT

(If sexual motivation finding/verdict, use form on page III-35)

I. OFFENDER SCORING (RCW 9.94A.360 (9))

ADULT HISTORY:

(If the prior offense was committed before 7/1/86, count prior adult offenses served concurrently as one offense; those served consecutively are counted separately. If both current and prior offenses were committed after 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of serious violent and violent felony convictions x 2 = _____

Enter number of nonviolent felony convictions x 1 = _____

JUVENILE HISTORY:

(Adjudications entered on the same date count as one offense except for violent offenses with separate victims)

Enter number of serious violent and violent felony adjudications x 2 = _____

Enter number of nonviolent felony adjudications x 1/2 = _____

OTHER CURRENT OFFENSES:

(Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other serious violent and violent felony convictions x 2 = _____

Enter number of nonviolent felony convictions x 1 = _____

STATUS: Was the offender on community placement on the date the current offense was committed? (if yes),

+ 1 = _____

Total the last column to get the Offender Score
(Round down to the nearest whole number)

--

II. SENTENCE RANGE

A. OFFENDER SCORE:

STANDARD RANGE
(LEVEL IX)

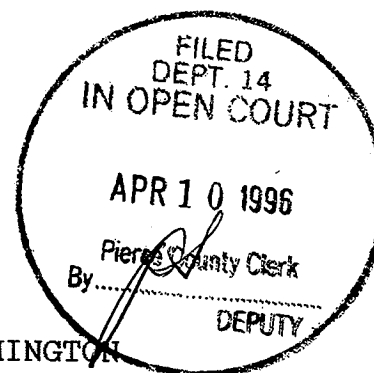
0	1	2	3	4	5	6	7	8	9 or more
31 - 41 months	36 - 48 months	41 - 54 months	46 - 61 months	51 - 68 months	57 - 75 months	77 - 102 months	87 - 116 months	108 - 144 months	129 - 171 months

B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.410).

C. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-17 or III-18 to calculate the enhanced sentence (RCW 9.94A.120) and add one year of community placement following release from state prison (RCW 9.94A.120).

APPENDIX “F”

Prosecutor’s Statement, re: Second Amended Information



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

SHAWN DOMINIQUE FRANCIS,

Defendant.

NO. 95-1-05023-1

APR 10 1996

PROSECUTOR'S STATEMENT

RE: SECOND AMENDED INFORMATION

13 The State requests the Court consider accepting a plea to the
14 filing of a second amended information pursuant to RCW 9.94A.090 for
15 the following reasons: The charges in the proposed second amended
16 information are the charges that the State realistically believes
17 would be proven at trial.

18 The proposed second amended information changes the Assault in
19 the First Degree against victim D'Ann Jacobsen to Assault in the
20 Second Degree. In order to convict the defendant of Assault in the
21 First Degree, the State would have to show that he assaulted D'Ann
22 Jacobsen with the intent to inflict great bodily harm. The evidence
23 would most likely show that he assaulted her with the hope of
24 knocking her unconscious so that he could take the victims' money.
25 That does not rise to the level of an intent to inflict great bodily
26 harm.

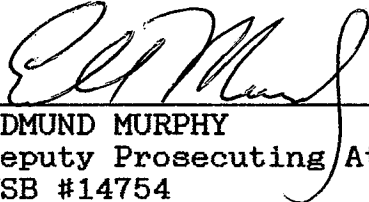
27 The proposed second amended information also drops the one
28 count of Attempted Robbery in the First Degree involving victim

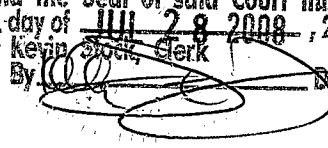
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PROSECUTOR'S STATEMENT - 1

1
2
3 Jason Lucas. The murder charge is Murder in the First Degree
4 because it occurred during the commission of an Attempted Robbery in
5 the First Degree. Under RCW 9.94A.400(1)(a), the charge of
6 Attempted Robbery in the First Degree would be treated as the "same
7 criminal conduct" as the charge of Murder in the First Degree, and
8 would, therefore, not affect the sentencing range of any of the
9 charges.

10
11
12 DATE: April 10, 1996.

13 
14 EDMUND MURPHY
15 Deputy Prosecuting Attorney
16 WSB #14754

17
18
19
20
21
22 STATE OF WASHINGTON, County of Pierce
23 ss: I, Kevin Stock, Clerk of the above
24 entitled Court, do hereby certify that this
25 foregoing instrument is a true and correct
26 copy of the original now on file in my office.
27 IN WITNESS WHEREOF, I hereunto set my
28 hand and the Seal of said Court this
day of JUL 28 2008, 20
Kevin Stock, Clerk
By  Deputy